IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6294 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARTNER OF VISHWAKARMA SOW MILL

Versus

STATE OF GUJARAT

Appearance:
MR HS MULIA for MR RC JANI for Petitioner
MR BH BHAGAT for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/07/2000

ORAL JUDGEMENT

The petitioner has come with the case that he had purchased the land in question on 29th January 1993 for a sum of Rs.1.5 lacs and on this transaction he had paid the stamp duty to the tune of Rs.21,000/-. The

petitioner was then served with a notice under Section 32A of the Bombay Stamps Act read with Rule 4(2) of the the Rules made thereunder, on 13th December 1995 by the Dy.Collector (Stamp Duty Valuation Organisation/ Division). Learned Counsel for the petitioner is not in a position to say as to whether the petitioner sent any reply to this notice or not. However, the fact remains that the Dy.Collector (Stamp Duty Valuation Organization/ Division) in this notice dated 13th December 1995 recorded that the market value of the land in question was Rs.6,23,364/- and the petitioner was actually required to pay the stamp duty of Rs.97,960/- and therefore, the stamp duty paid by the petitioner was deficient to the extent of Rs.76,960/-. The Dy.Collector (Stamp Duty Valuation Organisation/Division) also imposed a fine of Rs.250/- and thus, the petitioner was required to pay a further sum of Rs.77,166/- against the stamp duty with regard to this document no.25 dated 30th January 1993. After giving the notice as aforesaid, the Dy. Collector (Stamp Duty Valuation Organization/ Division) passed the order dated 4th July 1996 requiring the petitioner to deposit a sum of Rs.77,166/-. Against this order dated 4th July 1996 passed by the Dy. Collector, the petitioner preferred an appeal before the Chief Controlling Revenue Authority, being Appeal No.135 of 1996. This appeal was decided and dismissed on 24th February 1998. Aggrieved from this order dated 24th February 1998 passed by the Chief Controlling Revenue Authority, upholding the Dy. Collector's order dated 4th July 1996, the petitioner has preferred the present Special Civil Application.

2. Rule was issued on 23rd August 1999 and ad-interim relief in terms of para 12(B) was also granted meaning thereby the implementation, operation and execution of the impugned order dated 24th February 1998 read with order dated 4th July 1996 was stayed.

3. Learned Counsel for the petitioner has argued that the land in question was not comparable with the land which was the subject matter in the document registered at No.674/92 because that land was non-agricultural land and situated in the centre of the village Chanasma, whereas the land in question as was purchased by the petitioner was an agricultural land at a distance of about 1 km. from the village and that this aspect was highlighted before the appellate authority as mentioned in the memo of the appeal at Annexure.D and yet, the appellate authority did not consider the same while passing the impugned order. He, therefore, submits that it is a case of non-adjudication of the point which

was raised by the petitioner. Mr.Mulia has also invited my attention to a document filed along with the petition at page 24 of the paper book which is a certificate issued by Talati of Chanasma on 9th July 1998 wherein the market value of certain lands (claimed to be lands identically situated to the land in question) as on the dates between January 1992 and April 1996 have been given. Learned Counsel for the petitioner has submitted that this document could not have been produced either before the Dy. Collector or before the appellate authority because it is a document subsequent to the dates of the orders passed by these two authorities and it is only thereafter that the petitioner was able to lay his hand on this certificate which reflects the market value of the lands in the years 1992 to 1996 and had these standards been applied for the purpose of assessing the market value of the land which was the subject matter of the document no.25 dated 30th January 1993 in question, the market value could not have been assessed to the tune of Rs.6,23,364/- as was done by the Dy. Collector. Learned Counsel for the petitioner, therefore, submits that in the facts and circumstances of this case, the petitioner may be granted opportunity to produce this document before the Dy.Collector (Stamp Duty Valuation Organization/Division). Mr.Bhagat has submitted that without disturbing the orders as have been passed by the authorities if an opportunity is granted to the petitioner, he has no objection to such course of action. Reference has also been made by both the sides to an earlier order dated 11th August 1999 passed by this Court whereby Special Civil Application No.531 of 1999 was decided.

3. Looking to the facts of the present case, it is directed that should the petitioner produce the document such as the certificate dated 9th July 1998 issued by the Talati, Chanasma and the Dy. Collector (Stamp Duty Valuation Organization/Division) at Mehsana finds that the land in respect which the present document in question was registered is comparable with the lands about which the details are mentioned in the certificate dated 9th July 1998 and in case he comes to the conclusion after the consideration of the aforesaid document that the land which was the subject matter of the document registered at No.674/92 was in fact a non-agricultural land and the order passed by him dated 4th July 1996 is required to be revised, he may revise the order accordingly and in doing so, the earlier order passed by him on 4th July 1996 and the subsequent order dated 24th February 1998 as had been passed by the Chief Controlling Revenue Authority in appeal shall not come in

his way. But in case the Dy.Collector (Stamp Duty Valuation Organization/ Division), Mehsana comes to the conclusion that the document filed by the petitioner is not relevant for the purpose of comparing the land in question with the lands about which the certificate has been issued by the Talati, Chanasma, and that the contention about the land which was the subject matter of the document registered at No.674/92 being non-agricultural land is factually incorrect and not tenable and that no change is required in the earlier order passed by him, the earlier orders dated 4th July 1996 passed by the Dy. Collector and the subsequent order dated 24th February 1998 passed by the appellate authority shall hold good and the decision which shall be taken by the Dy. Collector in this regard shall determine the rights of the parties. The petitioner also consents to the above terms in which this order is passed. This Special Civil Application is accordingly allowed in part and the Rule is made absolute in the terms as aforesaid. No order as to costs.

(M.R. Calla, J.)

Sreeram.